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DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/777,761

Applicant(s)

MURPHY, GERALD B.

Examiner

Lena Najarian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20010604</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group III (claims 15-19) in the reply filed on April 19, 2005 is acknowledged.
2. Claims 1-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 19, 2005.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: item 152 (Fig. 2E), item 164 (Fig. 2H), and item 162 (Fig. 2G).
Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Figure 8 (page 49, line 10). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

5. Claims 15-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law

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of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

(A) In the present case, claims 15-16 only recite an abstract idea. The recited steps of exemplary claim 15 of merely developing agricultural marketing plans for agricultural producers, tying financial obligations of the agricultural producers to the use of the agricultural marketing plans, and providing marketing information to the agricultural producers in order to update the agricultural marketing plans does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention provides marketing information to the agricultural producers in order to update agricultural marketing plans. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 15-16 are deemed to be directed to non-statutory subject matter.

(B) In the present case, claims 17 & 20-24 only recite an abstract idea. The recited steps of exemplary claim 17 of merely eliciting information from a

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producer, performing a financial assessment of the agricultural enterprise, calculating a marketing financial risk score, receiving a price risk from a marketing service, calculating a level of crop insurance, and determining pre-sell quantities does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention creates a strategic agricultural marketing plan. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 17 & 20-24 are deemed to be directed to non-statutory subject matter.

(C) Moreover, in the present case, claims 18-19 only recite an abstract idea. The recited steps of exemplary claim 18 of merely underwriting financing with a strategic marketing plan and underwriting the strategic marketing plan with crop insurance does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a method of providing assured income for agricultural crops. Although the recited process produces a useful, concrete, and tangible

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result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 18-19 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 15-20 and 22-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneider (US 2002/0103688 A1).

(A) Referring to claim 15, Schneider discloses a method of providing agricultural marketing services comprising:

developing agricultural marketing plans for agricultural producers requiring updated marketing information (para. 17, lines 28-40 and para. 26 of Schneider; the Examiner interprets “farmers” to be a form of “producers”);

tying financial obligations of the agricultural producers to the use of the agricultural marketing plans (para. 6 and para. 17, lines 28-40 of Schneider);

providing marketing information to the agricultural producers in order to update the agricultural marketing plans (para. 26 of Schneider).

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(B) Referring to claim 16, Schneider discloses wherein the step of tying financial obligations is requiring the agricultural producers to use the agricultural marketing plans in order to receive financing (para. 17 of Schneider).

(C) Referring to claim 17, Schneider discloses a method of creating a strategic agricultural marketing plan comprising:

- eliciting information from a producer (para. 163 of Schneider; the Examiner interprets “farmer” to be a form of “producer”);

- performing a financial assessment of the agricultural enterprise (para. 9 of Schneider; the Examiner interprets “profit maximization” to be a form of “financial assessment”);

- calculating a marketing financial risk score (para. 3 of Schneider; the Examiner interprets “potential outcomes” to be a form of “score”);

- receiving a price risk from a marketing service (para. 13, para. 22 and para. 140, lines 8-12 of Schneider; the Examiner interprets “marketing advisors” to be a form of “marketing service”);

- calculating a level of crop insurance (para. 17 of Schneider); and

- determining pre-sell quantities (para. 16, lines 6-19 of Schneider).

(D) Referring to claim 18, Schneider discloses a method of providing assured income for agricultural crops comprising:

- underwriting financing with a strategic marketing plan (para. 17 of Schneider);

- underwriting the strategic marketing plan with crop insurance (para. 154 of Schneider).

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(E) Referring to claim 19, Schneider discloses updating the strategic marketing plan (para. 26 and para. 17, lines 28-40 of Schneider).

(F) Referring to claim 20, Schneider discloses wherein the step of calculating a marketing financial risk score includes computing a weighted average (para. 3 and para. 10 of Schneider; the Examiner interprets "outcome" to be a form of "score" and interprets "decision analysis" to imply the use of the "weighted average" technique).

(G) Referring to claim 22, Schneider teaches wherein the weighted average includes a weighted marginal income rate (para. 16 of Schneider).

(H) Referring to claim 23, Schneider teaches wherein the step of computing a marketing financial risk is computing a weighted average (para. 3 and para. 10 of Schneider; the Examiner interprets "decision analysis" to imply the use of the "weighted average" technique). Schneider does not expressly teach the specific data recited in claim 23; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Further, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the computing parameters disclosed in the prior art to include similar parameters with the motivation of accommodating user preferences in prioritizing the type of weighted averages to be computed.

(I) Referring to claim 24, Schneider discloses wherein the step of calculating a level of crop insurance comprises eliciting crop production information concerning the agricultural enterprise; eliciting debt obligations of the agricultural enterprise; and selecting a crop insurance coverage level greater than the debt obligations (para. 5, para. 20, para. 13, and para. 17, lines 20-24 of Schneider).

(J) Referring to claim 25, Schneider teaches wherein the step of calculating a level of crop insurance includes determining the level of crop insurance using a computer program (para. 17, lines 28-40, para. 10, and para. 18 of Schneider), a displayable output for the crop insurance coverage level that provides the crop insurance coverage level most likely to produce the most revenue (para. 22 of Schneider); and a calculation component capable of receiving the inputs and performing mathematical operations on the inputs to produce the output (para. 10 of Schneider). Schneider does not expressly teach the specific data recited in claim 25; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of

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patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Further, it would have been obvious to one having ordinary skill in the art at the time of the invention, to modify the calculation parameters disclosed in the prior art to include similar input parameters with the motivation of accommodating user preferences in prioritizing the type of inputs utilized.

(K) Referring to claim 26, Schneider discloses wherein the computer program further comprises a type of crop input (para. 86 and Fig. 5 of Schneider).

(L) Referring to claims 27 and 28, Schneider teaches a computer program and calculation component that receives inputs (see Fig. 8 of Schneider). Schneider does not expressly teach the specific data recited in claims 27 and 28; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Further, it would have been obvious to one having ordinary skill in the art at the time of the invention, to modify the calculation parameters disclosed in the

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prior art to include similar input parameters with the motivation of accommodating user preferences in prioritizing the type of inputs utilized.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 2002/0103688 A1) in view of Friedman ("Dictionary of Business Terms").

(A) Referring to claim 21, Schneider does not disclose wherein the weighted average includes a weighted Z-factor.

Friedman discloses a weighted Z score (p. 757 of Friedman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Friedman within Schneider. The motivation for doing so would have been to predict future outcomes.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited but not applied teaches reduced-risk

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agricultural transactions (US 2002/0023052 A1); a farm management system (5,897,619); and a method and system for implementing a combined investment (US 2002/0019793 A1).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

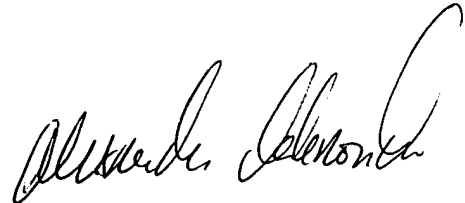
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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In

5-20-05



**ALEXANDER KALINOWSKI
PRIMARY EXAMINER**